

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF PENNSYLVANIA  
COURT FILE NO.:**

TINA MCELHINNY f/k/a TINA M. TRAFICANTE  Plaintiff,  vs  MERCHANTS' CREDIT GUIDE COMPANY,  Defendant.	<b><u>COMPLAINT</u></b>   <b><u>JURY TRIAL DEMANDED</u></b>
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**INTRODUCTION**

1. This is an action for damages brought by a consumer pursuant to the Fair Debt Collection Practices Act, 15 U.S.C. §1692 (“FDCPA”) and the Telephone Consumer Protection Act, 47 U.S.C. §227 (“TCPA”).
2. The Defendant repeatedly placed pre-recorded automated collection calls on Plaintiff’s cell phone without her authorization.

**JURISDICTION**

3. Jurisdiction of this Court arises under 28 U.S.C. § 1331.
4. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

**PARTIES**

5. Plaintiff, Tina McElhinny f/k/a Tina M. Traficante is a natural person who resides in the city of Jeannette, County of Westmoreland, Commonwealth of Pennsylvania, and is a “consumer” as that term is defined by 15 U.S.C. 1692a(3).

6. Defendant, Merchants' Credit Guide (hereinafter "MCG") is a debt collection agency operating from an address of 223 W. Jackson Boulevard, 9<sup>th</sup> Floor, Chicago, Illinois 60606 and is a "debt collector" as that term is defined by 15 USC §1692a(6).

**FACTUAL ALLEGATIONS**

7. Defendant MCG is attempting to collect a financial obligation that was primarily for personal, family or household purposes, that allegedly went into default for late payment and is therefore a "debt" as that term is defined by 15 USC §1692a(5).
8. The alleged debt was purchased, cosigned or placed otherwise to the Defendant for collection, when thereafter Plaintiff started receiving automated messages on her cell phone from Defendant in an attempt to collect this debt.
9. All of the communications occurred within a year preceding the filing of this complaint.
10. Except as otherwise noted, all calls were made by a pre-recorded, automatic telephone dialing system, commonly called an auto-dialer.
11. Plaintiff did not give permission or authorization, directly or indirectly to Defendant to place, nor for her to receive, automated telephone calls on her cell phone.. There was no established business relationship between the parties.
12. The calls violated Plaintiff's rights to privacy and tranquility.
13. Plaintiff found these repeated phone calls to be stressful, annoying and anxiety producing.
14. Defendant left (15) automated messages on Plaintiff's cell phone on the following dates: July 22, 2010, July 28, 2010, August 1, 2010, August 5, 2010, August 9, 2010, August 10, 2010, August 13, 2010, August 17, 2010, August 20, 2010, August 25, 2010, August

30, 2010, September 2, 2010, September 8, 2010, September 13, 2010, and September 28, 2010.

15. The automated message is as follows:

**This is a message for “Tina M. Traficante”, If we have dialed the wrong number to reach “Tina M. Traficante” please call 866-347-0736 to have this number removed from our system. If we have dialed the right number to reach, “Tina M. Traficante” but you are not “Tina M. Traficante”, please hang up or disconnect if you are not “Tina M. Traficante”. To listen to this message, there will now be a 3 second pause in this message.....by continuing to listen to this message you acknowledge you are “Tina M. Traficante”. You should not listen to this message so that other people can hear as it contains personal and private information. There will now be a 3 second pause of this message to allow you to listen to this message in private.....This is “Stacey” from Merchants’ Credit Guide. This communication is from a debt collector. This is an attempt to collect a debt and any information obtained will be used for that purpose. Please contact us about an important business matter at 888-249-4134, once again that number is 888-249-4134. Thank you.**

16. Plaintiff also received six (6) dropped calls from MCG on July 31, 2010, August 4, 2010, September 16, 2010, September 24, 2010, October 4, 2010, and October 7, 2010.
17. Plaintiff received a total of 21 telephone calls from Defendant, MCG.
18. The collection calls were persistent and willful.
19. Defendant may have initiated other collection calls as well.
20. These calls from Defendant MCG to Plaintiff are collection communications in violation of provisions under the FDCPA, including but not limited to:
- (a) Contacting Plaintiff repeatedly by the use of an auto-dialer, the Defendant engaged in conduct in which the natural consequence thereof is to harass, oppress, or abuse, pursuant to 15 U.S.C. §1692d; and
  - (b) Failing to send Plaintiff a 30 day validation notice within five (5) days of the initial communication, pursuant to 15 U.S.C. §1692g.

**COUNT I.**  
**VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT**  
**15 U.S.C. § 1692 et seq.**

21. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
22. The foregoing intentional and negligent acts and omissions of the Defendant constitute a violation of the FDCPA including, but not limited to, each and every one of the above-cited provisions of the FDCPA, 15 U.S.C. § 1692, et seq.

**COUNT II.**  
**VIOLATION OF THE TELEPHONE COMMUNICATION PROTECTION ACT (TCPA)**  
**47 U.S.C. § 227**

23. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.
24. The acts as described above violate the provisions of the TCPA, 47 USC § 227.
25. As a result, Defendant is liable for the statutory remedy of \$500.00 to \$1,500.00 per phone call, pursuant to 47 USC § 227(b)(3).

**PRAYER FOR RELIEF**

**WHEREFORE,** Plaintiff prays that judgment be entered against Defendant for:

- (a) Actual damages;
- (b) Statutory damages;
- (c) Attorneys fees and costs; and
- (d) Such other further relief as the Court shall deem just and proper.

October 12, 2010

Respectfully submitted,

**JEFFREY L. SUHER, P.C.**

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